

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
December 16, 2008 Session

TINA M. SWEAT v. STATE OF TENNESSEE

Appeal from the Criminal Court for Putnam County
Nos. 03-0448, 03-0449 Donald P. Harris, Senior Judge

No. M2008-00411-CCA-R3-PC - Filed June 12, 2009

The petitioner, Tina M. Sweat, appeals the January 2008 order of the Putnam County Criminal Court setting aside as void a January 2006 order of that same court granting her post-conviction relief from her convictions on two counts of possession of a Schedule II controlled substance with intent to sell, Class C felonies, and one count of assault, a Class A misdemeanor. On appeal, the petitioner argues that (1) the court below was without jurisdiction to consider the State's motion to set aside the order granting post-conviction relief and (2) even if jurisdiction was proper, the trial court erred by granting the State's motion because the order granting post-conviction relief was facially valid and therefore not void. After reviewing the record, we conclude that the post-conviction court's January 2006 order was facially valid; because the order was not void, the court below was without jurisdiction to issue its January 2008 order vacating the post-conviction court's order granting relief. Accordingly, that order was void. We therefore reverse the judgment of the trial court and reinstate the post-conviction court's January 2006 order, as well as all relief granted pursuant to the order.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed; Case Remanded.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which ALAN E. GLENN, J., joined. JERRY L. SMITH, J., not participating.

Patrick G. Frogge, Nashville, Tennessee, for the appellant, Tina M. Sweat.

Robert E. Cooper, Jr., Attorney General and Reporter; Mark A. Fulks, Assistant Attorney General; and Albert C. Schmutzer, Jr., District Attorney General Pro Tempore, for the appellee, State of Tennessee.

OPINION

The record reflects that in January 2004, the petitioner, Tina M. Sweat, entered guilty pleas in the Putnam County Criminal Court to two counts of possession of a Schedule II controlled

substance with intent to sell, Class C felonies, and one count of assault, a Class A misdemeanor. She received concurrent sentences of three years and six months on the two felony convictions, with the sentences to be served on probation supervised by the Department of Correction. She received a sentence of eleven months, twenty-nine days for her misdemeanor sentence, to be served on community corrections.

On January 30, 2006, the petitioner filed a post-conviction petition. The first two paragraphs of the five-paragraph petition recount the procedural history outlined above; the last three paragraphs of the petition read as follows:

3. The Petitioner was charged with possession of a controlled substance with a co-defendant and was found innocent of that charge. At the time, based upon the advice of counsel the Petitioner entered a plea of guilty even though she maintained that she was innocent.

4. The petitioner would aver that since that time the Attorney General's Office for the Thirteenth Judicial District has learned that in fact the Petitioner was innocent of those charges.

5. The Petitioner was not properly advised by counsel.

No other filing concerning this petition appears in the record. The next day, the post-conviction court issued an order granting the petition. The order states, in pertinent part:

This matter came on for hearing¹ on this the 31 day of January, 2006 . . . upon the Petition for Post Conviction Relief heretofore filed, statements of counsel and from all of which the Court finds that this matter is well founded and the Petition for Post Conviction Relief should be granted and the conviction is hereby set aside and the Defendant restored to her pre-conviction status. Further, upon motion of the Attorney General, this matter shall be nollied [sic] and dismissed.

The trial court subsequently entered orders dismissing the charges against the petitioner. On April 28, 2006, the trial court issued an order expunging the charges from her record.

On August 14, 2007, the State filed a "Petition to Set Aside Post Conviction Relief Judgment as Void and All Subsequent Orders Related Thereto." In its memorandum of law filed in support of the petition, the State argued—in the only argument it has made throughout these proceedings; at no point has the State argued that the substance of the post-conviction court's order was incorrect—that the order granting post-conviction relief should be set aside as void because the post-conviction court was without jurisdiction to consider the petition. The State asserted that the post-conviction court had no jurisdiction to consider the petition because the untimely petition did not

¹There is no transcript of any hearing in the record.

allege any claim based upon the three exceptions to the one-year limitations period provided in the Post-Conviction Procedure Act. See Tenn. Code Ann. § 40-30-102(b) (2006).

The trial court conducted a hearing on the State's motion on December 17, 2007.² On January 9, 2008, the trial court issued an order setting aside as void the post-conviction court's order granting relief. The trial court found that the post-conviction court was without jurisdiction to consider the petition because it was untimely, and did not allege any claim requiring tolling pursuant to either section 40-30-102(b) or due process-based concerns. The trial court's order also set aside the earlier orders dismissing the charges against the petitioner and expunging her record. The petitioner subsequently filed a timely notice of appeal.

ANALYSIS

Central to this court's resolution of the instant appeal is our determination of whether the post-conviction court's January 2006 order granting relief was void. The petitioner argues that the January 2006 order was valid on its face and not void, and therefore the trial court was without jurisdiction to issue its January 2008 order vacating the post-conviction court's order. The State contends that the post-conviction court was without jurisdiction to consider the petitioner's initial post-conviction petition, therefore rendering the January 2006 order granting relief void and subject to attack at any time. After reviewing the record, we agree with the petitioner.

"A void judgment³ is one in which the judgment is facially invalid because the court lacked jurisdiction or [statutory] authority to render the judgment" Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999) (citations omitted); see also Summers v. State, 212 S.W.3d 251, 256 (Tenn. 2007). "A voidable judgment is one that is facially valid and requires proof beyond the face of the record or judgment to establish its invalidity." Summers, 212 S.W.3d at 256 (citing Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998)). Our supreme court has held that a void judgment, such as one imposing an illegal sentence, "is illegal and is subject to being set aside at any time, even if it has become final." State v. Mahler, 735 S.W.2d 226, 227-28 (Tenn. 1987).

Tennessee Code Annotated section 40-30-102(a) provides that a claim for post-conviction relief must be filed "within one (1) year of the date of the final action of the highest state appellate court to which appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of such petition shall be barred." Tenn. Code Ann. § 40-30-102(a). The statute of limitations for filing a post-conviction petition is jurisdictional. See id. § 40-30-102(b) ("No court shall have jurisdiction to consider a petition filed after the expiration of the limitations period unless [certain statutory exceptions are met]"). "[Section] 40-30-202(a) declares that the one-year statutory period is an element of the right to file a post-conviction petition and that

²No transcript from this hearing appears in the record.

³The Post-Conviction Procedures Act provides that an order granting or denying post-conviction relief is considered a final judgment. See Tenn. Code Ann. § 40-30-116.

it is not an affirmative defense that must be asserted by the State.” State v. Nix, 40 S.W.3d 459, 464 (Tenn. 2001). “Therefore, it is incumbent upon a petitioner to include allegations of fact in the petition establishing either timely filing or tolling of the statutory period. . . . Failure to include sufficient factual allegations of either compliance with the statute or [circumstances] requiring tolling will result in dismissal.” Id. (citations omitted).

The Post-Conviction Procedure Act provides that a petition may be filed beyond the expiration of the one-year limitations period if the otherwise untimely claim (1) is based on a constitutional right that did not exist at trial, (2) is based on new scientific evidence, or (3) seeks relief from a sentence that was enhanced because of a previous conviction that was later held to be invalid. Tenn. Code Ann. § 40-30-102(b)(1)-(3). The one-year limitations period may also be tolled based on due process concerns, which dictate that strict application of the statute of limitations may not deny a petitioner a reasonable opportunity to assert a claim in a meaningful time and manner when the failure to file in a timely manner is due to circumstances beyond a petitioner’s control. State v. McKnight, 51 S.W.3d 559, 563 (Tenn. 2001); Williams v. State, 44 S.W.3d 464 (Tenn. 2001); Seals v. State, 23 S.W.3d 272 (Tenn. 2000); Sands v. State, 903 S.W.2d 297, 301 (Tenn. 1995).

In the instant case, the petition for post-conviction relief was filed beyond the one-year limitations period; therefore, jurisdiction would have been proper only if one of the statutory exceptions applied or due process concerns required tolling. The State argues that it can be determined from the face of the petition that the petitioner did not state a cognizable claim for relief based upon a statutory exception or due process concerns, thus rendering the post-conviction court without jurisdiction to consider her petition. However, such determinations cannot be made from the face of the petition or the face of the order granting relief. While the post-conviction court’s order does not make findings of fact and conclusions of law, and while no transcript of a hearing regarding the petition appears in the record, the January 2006 order signifies that the parties agreed that jurisdiction was proper in that the petitioner’s claim of actual innocence either met the statutory exception or necessitated due process-based tolling. The basis upon which the parties agreed that jurisdiction was proper and relief was warranted—agreements which the post-conviction court adopted—and any determination by this court as to why those conclusions could have been improper would require this court to consider proof beyond the face of the order granting relief. Such considerations would render the post-conviction court’s order facially valid in that the order would be voidable, not void.

Given that the post-conviction court’s order granting relief was facially valid, it was subject to appeal only in the manner established by the Post-Conviction Procedure Act. The Act provides, in pertinent part, that “[t]he order granting or denying relief under the provisions of this part shall be deemed a final judgment, and an appeal may be taken to the court of criminal appeals in the manner prescribed by the Tennessee Rules of Appellate Procedure.” Tenn. Code Ann. § 40-30-116. Tennessee Rule of Appellate Procedure 3(c) permits the State to “appeal as of right . . . a final judgment in a . . . post-conviction proceeding.” Such an appeal must be filed within thirty days of the entry of the judgment, although an untimely filing may be waived in the interest of justice. Tenn.

R. App. P. 4(a). Generally, “[a] trial court’s judgment . . . becomes final thirty days after its entry unless a timely notice of appeal or specified post-trial motion is filed. After the trial court loses jurisdiction, generally it retains no power to amend a judgment. Judgments made outside the court’s jurisdiction are void.” State v. Peele, 58 S.W.3d 701, 704 (Tenn. 2001) (internal citations omitted).

In this case, the State did not appeal the post-conviction court’s decision to this court, as provided under the Act and our procedural rules. Rather, it sought review in the trial court. Because the post-conviction court’s order had become final over a year and a half before the State filed its motion to set aside the order granting relief, the trial court had no jurisdiction to consider the State’s August 2007 motion or issue its January 2008 order. Therefore, we conclude that the trial court’s January 2008 order was void and must be reversed.

CONCLUSION

Upon consideration of the foregoing and the record as a whole, the 2008 judgment of the trial court is reversed. The case is remanded to the trial court for reinstatement of the post-conviction court’s January 2006 order granting relief and the reinstatement of all relief granted pursuant to the order.

D. KELLY THOMAS, JR., JUDGE